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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/148009

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on May 02, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's Prior Authorization (PA) request for foot inserts.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Pamela Hoffman

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. On February 5, 2013, the Petitioner's provider, Morfey's Limbs and Braces, submitted a Prior Authorization request on the Petitioner's behalf for removable foot inserts at a cost of \$367.54.

3. The Petitioner has diagnoses that include tibialis tendonitis, peroneal tendonitis, and congenital pes planus. The Petitioner has pain in his left foot. He has an ulcer on his left leg due to a war injury. He had a surgical procedure on his left leg. He has had physical therapy for his foot and leg issues.
4. On February 13, 2013, the agency denied the Petitioner's PA request for foot inserts.
5. On March 11, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

The DHCAA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stats. §§ 49.46(2) and 49.47(6)(a), as implemented by the Wisconsin Administrative Code, chapter DHS 107.

The administrative code provision governing durable medical equipment provides, in relevant part, as follows:

DHS 107.24. Durable Medical Equipment and Supplies . . .

(2) COVERED SERVICES . . . (c) Categories of durable medical equipment. The following are categories of durable medical equipment covered by MA:...

2. Orthopedic and corrective shoes. These are any shoes attached to a brace for prosthesis . . . .
3. Orthoses. These are devices which limit or assist motion of any segment of the human body. They are designed to stabilize a weakened part or correct a structural problem. Examples are arm braces and leg braces....

(4) OTHER LIMITATIONS . . .

(f) Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross foot deformities, or when attached to a brace or a bar. These conditions shall be described in the prior authorization request....

(5) NON-COVERED SERVICES. The following services are not covered services:

- (a) Foot orthoses or orthopedic or corrective shoes for the following conditions:
  1. Flattened arches, regardless of the underlying pathology;
  2. Incomplete dislocation or subluxation metatarsalgia with no associated deformities;
  3. Arthritis with no associated deformities; and,
  4. Hypoallergenic conditions....

Under MA rules orthotics can be covered only for post-surgery conditions or gross foot deformities. A discrepancy in leg length must be at least ½ inch. See MA Prior Authorization Guidelines, p. 140.B.002.02. Petitioner's condition is not of any of these covered types. Congenital pes planus describes flat feet. Tibialis tendonitis is an inflammation or tearing of the tibial tendon. Surgical treatment is sometimes indicated. Peroneal tendonitis is an enlargement or thickening of the tendons on the outside of the ankle. Treatment is generally non-surgical and recovery is slow. These are painful conditions; however, there is no evidence that the Petitioner has a gross deformity of the foot or needs orthoses as part of a brace or bar. The Petitioner did indicate that he has had surgery in the past; however,

he was unable to relate when the surgery occurred or whether the surgery was related to his current foot pain or conditions. There is no exception written into the rules, so I must conclude that the denial of the foot inserts was correct. This is not the same thing as saying that the Petitioner would not benefit from the inserts. It is clear that these are recommended remedies for him; and they may prove beneficial. Rather, this Decision only means that MA will not pay for them, and the Petitioner must make other arrangements to pay for the cost of the inserts.

### **CONCLUSIONS OF LAW**

The agency properly denied the Petitioner's PA request for foot inserts.

**THEREFORE, it is** **ORDERED**

That the petition be, and hereby is, dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

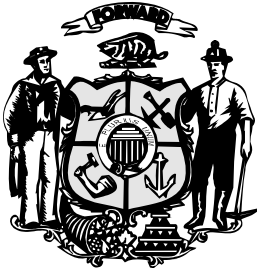
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 29th day of May, 2013

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 29, 2013.

Division of Health Care Access And Accountability